

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL FILED TO:  
FURNISHED FOR REVIEW: ✓  
CONSULT FOR INT(S): ✓ (Andrx)  
FILED AND SE:  
DATE: 12/29/08  
BY: *ng*

ASTRA AKTIEBOLAG,  
AKTIEBOLAGET HÄSSLE,  
KBI-E, INC., KBI, INC. and  
ASTRAZENECA LP

Plaintiffs,

v.

ANDRX PHARMACEUTICALS, INC.

Defendant.

99-CIV-8926(BSJ)

99-CIV-9887(BSJ)

U.S. SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
FILED: 12/29/08

In re OMEPRAZOLE PATENT LITIGATION

M-21-81 (BSJ)

MDL Docket No. 1291

**STIPULATION OF DISMISSAL OF CERTAIN CLAIMS**

WHEREAS, plaintiffs (collectively “Astra”) filed two Amended and Supplemented Complaints, dated March 22, 2001, in which Astra alleged, among other things that defendant Andrx Pharmaceuticals, Inc. (“Andrx”) willfully infringed U.S. Patent Nos. 4,786,505 and 4,853,230 and should pay attorney’s fees under 35 U.S.C. § 285 (“Astra’s Willful Infringement Claims”);

WHEREAS, Andrx filed an Amended Answer, Affirmative Defenses and Counterclaims on June 22, 2001, in which Andrx alleged violations of the antitrust laws and other laws in its counterclaims XXI, paragraphs 107 to 158; XXII, paragraphs 159 to 161; XXIII, paragraphs 162 to 164; XXIV, paragraphs 165 to 169; and XXV, paragraphs 170 to 172 (“Andrx’s Original Claims”);

WHEREAS, on November 21, 2008, Astra moved for leave to file a

Second Supplemental Complaint (“Astra Supplemental Complaint”);

WHEREAS, on November 21, 2008, Andrx moved for leave to file Amended and Supplemental Counterclaims (“Andrx’s Supplemental Counterclaims”) against Astra if Astra is allowed to file the Astra Supplemental Complaint (“Andrx’s Counterclaim Motion”);

WHEREAS, Astra does not wish to pursue Astra’s Willful Infringement Claims but wishes to pursue the Astra Supplemental Complaint; and

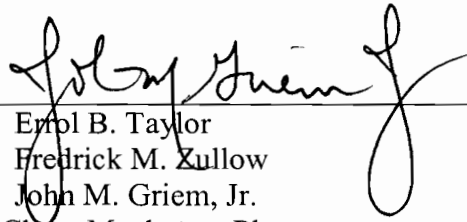
WHEREAS, Andrx does not wish to pursue Andrx’s Original Claims but wishes to pursue Andrx’s Supplemental Counterclaims if Astra is permitted to pursue the Astra Supplemental Complaint;

NOW THEREFORE, it is hereby stipulated and agreed by and between Astra and Andrx, as follows:

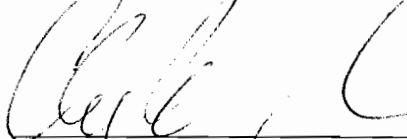
1. Astra hereby withdraws Astra’s Willful Infringement Claims with prejudice subject to Paragraph 3, below.
2. Andrx hereby withdraws Andrx’s Original Claims with prejudice subject to Paragraph 3, below.
3. Nothing in this Stipulation shall affect the Final Judgments entered by the Court in these cases. Nothing in this Stipulation shall affect Astra’s rights, if any, to pursue or seek to pursue the Astra Supplemental Complaint. Nothing in this Stipulation shall affect Andrx’s rights, if any, to pursue or seek to pursue Andrx’s Supplemental Counterclaims.

Dated: New York, New York  
December 18, 2008

MILBANK, TWEED, HADLEY & McCLOY LLP

By:   
Enol B. Taylor  
Fredrick M. Xulow  
John M. Griem, Jr.  
One Chase Manhattan Plaza  
New York, NY 10005  
212-530-5000  
212-822-5430 (fax)  
*Attorneys for Plaintiffs Astra Aktiebolag, et al.*

PROSKAUER ROSE, LLP

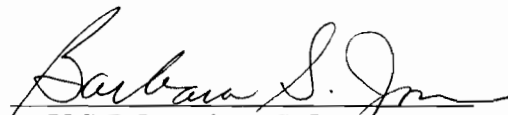
By:   
Margaret A. Dale  
Claude M. Millman  
1585 Broadway  
New York, New York 10036-8299  
(212) 969-3000  
(212) 969-2900 (fax)

-and-

HEDMAN & COSTIGAN  
1185 Avenue of the Americas  
New York, New York 10036  
(212) 302-8989

*Attorneys for Defendant  
Andrx Pharmaceuticals, Inc.*

SO ORDERED:

  
U.S.D.J. Barbara S. Jones